

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
ANDIE ZAPATA,

Plaintiff,

-against-

THE CITY OF NEW YORK AND CORRECTION
OFFICER "JOHN" MORAN, SHIELD NUMBER
UNKNOWN,

Defendants.
-----X

05-CV-4799 (CLB)

**COMPLAINT
AND JURY DEMAND**

ECF CASE

Plaintiff ANDIE ZAPATA by his attorneys, TRACIE A. SUNDACK & ASSOCIATES, L.L.C.,
complaining of the Defendants THE CITY OF NEW YORK AND CORRECTION OFFICER "JOHN"
MORAN, SHIELD NUMBER UNKNOWN, respectfully alleges, as follows:

JURISDICTION

1. This action arises under the provisions of the First, Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution and under federal law, particularly the Civil Rights Act, 42 U.S.C. Sections 1981, 1983 and 1985 (2) and (3).

2. This Court has jurisdiction of this cause under 28 U.S.C., by virtue of Section 1343.
Declaratory and injunctive relief is authorized pursuant to 28 U.S.C. Sections 2201 and 2202 and F.R.C.P. 37.

AS AND FOR A FIRST CAUSE OF ACTION FOR ASSAULT

3. That at all times hereinafter mentioned, Defendant THE CITY OF NEW YORK was and still is a municipal corporation duly organized and existing under and by virtue of the General Municipal Law of the State of New York.

4. That at all times hereinafter mentioned, Defendant THE CITY OF NEW YORK, its agents servants and employees operated, maintained and controlled The New York City Department of Correction, including all the correction officers thereof.

5. Upon information and belief, that at all times hereinafter mentioned, Defendant CORRECTION OFFICER "JOHN" MORAN, SHIELD NUMBER UNKNOWN, was employed by Defendant, THE CITY

OF NEW YORK, Department of Correction, as a correction officer.

6. Upon information and belief, that at all times hereinafter mentioned, Defendant CORRECTION OFFICER "JOHN" MORAN, SHIELD NUMBER UNKNOWN, was assigned to the Anna M. Kross Center located at 18-18 Hazen Street, East Elmhurst, New York 11370.

7. That at all times hereinafter mentioned, Defendant CORRECTION OFFICER "JOHN" MORAN, SHIELD NUMBER UNKNOWN, acted within the scope of his employment for Defendant THE CITY OF NEW YORK.

8. That at all times hereinafter mentioned, Defendant CORRECTION OFFICER "JOHN" MORAN, SHIELD NUMBER UNKNOWN, was acting under the color and pretense of the statutes, ordinances, regulations, customs, and usages of the City and State of New York, County of Bronx and under the authority of his office as correction officer for said city and county.

9. That on or about June 27, 2002, at approximately 5:00 p.m., Defendant THE CITY OF NEW YORK through its agents, servants and/or employees, including but not limited to Defendant CORRECTION OFFICER "JOHN" MORAN, SHIELD NUMBER UNKNOWN, unlawfully, illegally, unjustifiably, intentionally, maliciously, wantonly, recklessly, and without cause, reason or justification assaulted and battered the Plaintiff ANDIE ZAPATA.

10. That on or about June 27, 2002, at approximately 5:00 p.m., Plaintiff ANDIE ZAPATA was assaulted in the inmate waiting pen of the Anna M. Kross Center on Rikers Island by Defendant THE CITY OF NEW YORK, through its agents, servants and/or employees, including but not limited to Defendant CORRECTION OFFICER "JOHN" MORAN, SHIELD NUMBER UNKNOWN.

11. That on or about June 27, 2002, at approximately 5:00 p.m., CORRECTION OFFICER "JOHN" MORAN, SHIELD NUMBER UNKNOWN, physically attacked Plaintiff ANDIE ZAPATA without any provocation.

12. That on or about June 27, 2002, at approximately 5:00 p.m., CORRECTION OFFICER "JOHN" MORAN, SHIELD NUMBER UNKNOWN, verbally abused Plaintiff ANDIE ZAPATA without any provocation.

13. That as a result of the aforesaid intentional acts committed by the Defendants, their agents,

servants and employees, acting within the scope of their authority, and without probable or reasonable cause, the Plaintiff ANDIE ZAPATA: suffered serious bodily injury and was caused to become and remain sick, sore, lame, and disabled; was compelled to obtain medical treatment for the injuries in an effort to alleviate and/or cure some of the injuries and disabilities; was incapacitated him from his duties and thereby deprived of the emoluments derived therefrom; was prevented from enjoying the normal fruits of his activities; has incurred substantial monetary expenses, loss and injuries, some of which are permanent in nature.

14. Immediately after Plaintiff ANDIE ZAPATA suffered the aforesaid serious and severe injuries, the Defendant, THE CITY OF NEW YORK and its agents, servants and/or employees including, but not limited to, Defendant CORRECTION OFFICER "JOHN" MORAN, SHIELD NUMBER UNKNOWN, failed to provide Plaintiff ANDIE ZAPATA with necessary, immediate medical attention thereby causing Plaintiff ANDIE ZAPATA to suffer additional pain and suffering and aggravating his physical injuries.

15. The foregoing acts of Defendant THE CITY OF NEW YORK AND CORRECTION OFFICER "JOHN" MORAN, SHIELD NUMBER UNKNOWN, under color of law and under color of their authority as employees, agents and/or servants of the State of New York, violated the rights, privileges, and immunities guaranteed to Plaintiff, ANDIE ZAPATA, and other citizens by the Constitution of the United States, and are therefore liable pursuant to 42 U.S.C. §1983.

16. The conduct of each of the Defendants THE CITY OF NEW YORK AND CORRECTION OFFICER "JOHN" MORAN, SHIELD NUMBER UNKNOWN, deprived Plaintiff ANDIE ZAPATA of the following rights, privileges and immunities secured to him by the United States Constitution:

a. The right of Plaintiff ANDIE ZAPATA to be secure in his person and effects against unreasonable search and seizure under the Fourth and Fourteenth Amendments to the Constitution of the United States.

b. The right of Plaintiff ANDIE ZAPATA to be informed of the nature and cause of the accusation against him, secured to him under the Sixth and Fourteenth Amendments to the Constitution of the United States; and

c. The right of Plaintiff ANDIE ZAPATA not to be deprived of life, liberty, or property without due process of law, and the right to the equal protection of the laws, secured by the Fourteenth Amendment to the Constitution of the United States.

17. That by reason of the foregoing, Plaintiff ANDIE ZAPATA has suffered damages in the sum of ONE MILLION (\$1,000,000.00) DOLLARS.

AS AND FOR A SECOND CAUSE OF ACTION FOR FAILURE TO SUPERVISE

18. Plaintiff ANDIE ZAPATA repeats and realleges each and every paragraph of this complaint and further alleges:

19. The failure of Defendant, THE CITY OF NEW YORK, to adequately train, supervise, discipline or in any way control the behavior of Defendant CORRECTION OFFICER "JOHN" MORAN, SHIELD NUMBER UNKNOWN, and other correction officers assigned to the Anna M. Kross Center in the exercise of their employment functions, and their failure to enforce the laws of the State of New York and the regulations of Defendant, THE CITY OF NEW YORK, is evidence of the reckless lack of cautious regard for the rights of the public including Plaintiff, ANDIE ZAPATA. Further, Defendants CORRECTION OFFICER "JOHN" MORAN, SHIELD NUMBER UNKNOWN, exhibited a lack of that degree of due care which prudent and reasonable individuals would show.

20. The failure of the Defendant, THE CITY OF NEW YORK, to train, supervise, discipline or in any other way control the Defendant CORRECTION OFFICER "JOHN" MORAN, SHIELD NUMBER UNKNOWN, and other correction officers assigned to the Anna M. Kross Center, in the exercise of their employment functions and their failure to enforce the laws of the State of New York and the regulations of the Defendant THE CITY OF NEW YORK, was carried out willfully, wantonly, maliciously and with such reckless disregard for the consequences as to display a conscious disregard for the dangers of harm and injury to the citizens of New York, including Plaintiff ANDIE ZAPATA.

21. It is the policy, custom and practice of the Defendant, THE CITY OF NEW YORK, to (a) inadequately train, supervise, discipline or in any way control the behavior of police officers in their employ; (b) continue to employ police officers and other police officers without adequate training, supervision or discipline; (c) make no investigation of charges of inadequate training, supervision or discipline of Defendant CORRECTION OFFICER "JOHN" MORAN, SHIELD NUMBER UNKNOWN and other correction officers; (d) make no effort to halt and/or discipline police officers charged with these or similar offenses, whether civilly or criminally.

22. All of these policies, customs and practices of the Defendant, THE CITY OF NEW YORK, were a proximate cause of the injuries sustained by Plaintiff ANDIE ZAPATA.

23. Wherefore, Plaintiff ANDIE ZAPATA asks that this Court declare the policies, practices and acts complained of as illegal and unconstitutional, and issue an injunction against Defendants THE CITY OF NEW YORK AND CORRECTION OFFICER "JOHN" MORAN, SHIELD NUMBER UNKNOWN, to cease and desist from the above described activities.

AS AND FOR A THIRD CAUSE OF ACTION FOR PUNITIVE DAMAGES

24. Plaintiff ANDIE ZAPATA repeats, reiterates, and realleges each and every paragraph of this complaint and further alleges:

25. The acts, conduct, and behavior of Defendants, THE CITY OF NEW YORK AND CORRECTION OFFICER "JOHN" MORAN, SHIELD NUMBER UNKNOWN, were performed each of them knowingly, intentionally, and maliciously.

26. By reason of the foregoing, Plaintiff ANDIE ZAPATA is entitled to an award of punitive damages in the sum of ONE MILLION (\$1,000,000.00) DOLLARS.

AS AND FOR A FOURTH CAUSE OF ACTION FOR ATTORNEY'S FEES

27. Plaintiff ANDIE ZAPATA repeats, reiterates, and realleges each and every paragraph of this complaint and further alleges:

28. By reason of the foregoing acts and/or omissions of the Defendants THE CITY OF NEW YORK AND CORRECTION OFFICER "JOHN" MORAN, SHIELD NUMBER UNKNOWN, in violation of the VIII and XI Amendments of the United States Constitution Plaintiff ANDIE ZAPATA has been forced to bring this lawsuit to enforce 42 U.S.C. Section 1983 and as a result thereof has suffered significant economic loss in the form of attorney's fees.

29. Pursuant to 42 U.S.C. Section 1988 Plaintiff ANDIE ZAPATA is entitled to reasonable attorney's fees as part of the costs.

30. By reason of the foregoing, Plaintiff ANDIE ZAPATA is entitled to attorneys fees in the amount of ONE MILLION (\$1,000,000.00) DOLLARS.

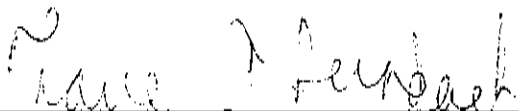
WHEREFORE, Plaintiff ANDIE ZAPATA demands judgment against Defendants THE CITY OF

NEW YORK AND CORRECTION OFFICER "JOHN" MORAN, SHIELD NUMBER UNKNOWN, jointly and severally, as follows: On the First Cause of Action for the sum of ONE MILLION (\$1,000,000.00) DOLLARS; On the Second Cause of Action for an injunction; On the Third Cause of action for the sum of ONE MILLION (\$1,000,000.00) DOLLARS, On the Fourth Cause of Action for the sum of ONE MILLION (\$1,000,000.00) DOLLARS; together with interest, costs and disbursements of this action.

JURY DEMAND

Plaintiff ANDIE ZAPATA demands a trial by jury in this action.

Dated: White Plains, New York
April 25, 2005.



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